surviving, to her for life, then to A.'s issue. *Held*, that the last gift is too remote. *Taylor* v. *Blake*, [1912] 1 I. R. 1.

A gift to a class to be determined at the death of an unascertained wife is too remote, as the wife may not be *in esse* at the time of the gift. If in the present case "issue" were construed to mean "children," the gift would be good, as the class would be determined on A.'s death. But the case adopts the English rule of construction that "issue" *primâ facie* means "descendants." *Leigh* v. *Norbury*, 13 Ves. Jr. 340. Chancellor Kent and Judge Redfield believed the primary meaning of the word was "children." See 4 KENT, COMM., *278, note; 2 REDFIELD, WILLS, 1 ed., 357, note. A few states have adopted their view. *Thomas* v. *Levering*, 73 Md. 451, 21 Atl. 367. See *Brisbin* v. *Huntington*, 128 Ia. 166, 173, 103 N. W. 144, 147. The modern tendency is to allow slight circumstances to change the meaning to "children." *Palmer* v. *Horn*, 84 N. Y. 516; *Shalters* v. *Ladd*, 141 Pa. St. 349, 21 Atl. 596. But even states that have been most liberal in this adhere to the English rule as to the *primâ facie* meaning, where there are no modifying circumstances. *Schmidt* v. *Jewett*, 195 N. Y. 486, 88 N. E. 1110. The principal case is right in holding that the rule against perpetuities cannot affect the construction. See GRAY, RULE AGAINST PERPETUITIES, 2 ed., § 629. Two American cases construe "issue" as "descendants" even though this results in a perpetuity. *Estate of Cavarly*, 119 Cal. 406, 51 Pac. 629; *Bartlett* v. *Sears*, 81 Conn. 34, 70 Atl. 33.

WILLS — CONSTRUCTION — PARTICULAR WORDS: "IN CASE OF DEATH." — A. devised realty and personalty to his wife for life, and after her death to his eight children, and in case of the death of one or more of the children, their share or shares to be equally divided between the survivors. All the children survived the testator; one died before the widow; the widow died. *Held*, that the heir and personal representative of the deceased child are entitled to his share. *Re Poultney*, 56 Sol. J. 252 (Eng., Ch. D., Jan. 19, 1912).

Where, after an absolute gift, there is a gift over in the event of the death of the legatee, questions of construction arise. Death, which is certain, is spoken of as contingent. If the gift is an immediate gift to A., and if he dies, then to B., it means death in the testator's lifetime. *Hinckley* v. *Simmons*, 4 Ves. Jr. 160; *Whitney* v. *Whitney*, 45 N. H. 311; *Fowler* v. *Ingersoll*, 127 N. Y. 472, 28 N. E. 471. If the gift is future, as in the principal case, it might mean either dying before the testator or before the period of vesting in possession. By the weight of authority, it is taken to mean the latter. *Hervey* v. *M'Laughlin*, 1 Price 264; *Beatty's Admr.* v. *Montgomery's Executrix*, 21 N. J. Eq. 324. *Contra*, *Johnes* v. *Beers*, 57 Conn. 295, 18 Atl. 100. It is said that the testator is not presumed to have contemplated the event of the legatee's dying before himself. See *Green* v. *Barrow*, 10 Hare 459, 461. This is, of course, only a rule of construction. *Milner* v. *Milner*, 34 Beav. 276. See 1 WILLIAMS, EXECUTORS, 10 ed., 1007. Even as such its soundness is questionable, for it is inconsistent with the tendency to avoid a construction which would divest an estate. *In re Cobbold*, [1903] 2 Ch. 299. It is submitted that more satisfactory results will be reached if courts, as in the principal case, construe each particular will unhampered by a rule of construction.

WILLS — CONSTRUCTION — TAKING PER STIRPES OR PER CAPITA. — The testator devised land to A. for life and at her death, provided she died without issue, to be equally divided between "the bodily heirs" of X. and Y. The probate court construed the will as giving a half interest to the bodily heirs of X. and a half interest to the bodily heirs of Y. *Held*, that this is error, since all the children should take in equal parts. *Taylor* v. *Cribbs*, 56 So. 952 (Ala.).

In the absence of any intention to the contrary on the face of the will, the general rule is that all take *per capita* rather than *per stirpes* under a gift to the

children of several persons. See 2 JARMAN, WILLS, 6 ed., 1711. This is true where the gift is to the children of X. and Y. in equal shares. *Armitage* v. *Williams*, 27 Beav. 346; *Budd* v. *Haines*, 52 N. J. Eq. 488, 29 Atl. 170. So also where it is to the children of X. and the children of Y. *Lady Lincoln* v. *Pelham*, 10 Ves. Jr. 166; *Britton* v. *Miller*, 63 N. C. 268. A gift to X. and Y. and their children is treated in the same way. *Cunningham* v. *Murray*, 1 De G. & Sm. 366. And so is a gift to a class and their children. See *Almand* v. *Whitaker*, 113 Ga. 889, 890, 39 S. E. 395. "Bodily heirs" as used in the principal case must mean children. Where words importing equal division are used, as in the principal case, a presumption is raised in favor of giving *per capita*. *In re Stone*, [1895] 2 Ch. 196, 201; *Kling* v. *Schnellbecker*, 107 Ia. 636, 638, 78 N. W. 673. This presumption, however, yields to very slight evidence of a different intention in the context of the will. See *Scott's Estate*, 163 Pa. St. 165, 169; 2 JARMAN, WILLS, 6 ed., 1712. Had the gift in the principal case been substitutional, *i. e.*, to several persons *or* their children, a different result would have been reached. *Congreve* v. *Palmer*, 16 Beav. 435. See *Kling* v. *Schnellbecker*, 107 Ia. 636, 639, 78 N. W. 673, 674.

WITNESSES — PRIVILEGE AGAINST SELF-INCRIMINATION — USE IN EVIDENCE OF BANKRUPT'S BOOKS IN POSSESSION OF TRUSTEE. — The defendant's books were taken over by a receiver and afterwards by a trustee in bankruptcy. They were used against him without his knowledge in subsequent proceedings before the grand jury. *Held*, that the defendant's constitutional right not to be compelled to be a witness against himself was not violated. *United States* v. *Halstead*, 40 Wash. L. Rep. 23 (D. C., Ct. App., Jan. 2, 1912).

The constitutional sanction of the common-law privilege against self-incrimination forbids compelling a person to act affirmatively in furnishing evidence against himself. See 4 WIGMORE, EVIDENCE, §§ 2252, 2263, 2264. The production of documents under a *subpœna* or other process treating him as a witness may be refused. *Boyle* v. *Smithman*, 146 Pa. St. 255, 23 Atl. 397; *Lamson* v. *Boyden*, 160 Ill. 613, 43 N. E. 781. But articles obtained by search, whether legal or not, may be admitted in evidence without violating the privilege. *Gindrat* v. *People*, 138 Ill. 103, 27 N. E. 1085; *Adams* v. *New York*, 192 U. S. 585, 24 Sup. Ct. 372. But see *Boyd* v. *United States*, 116 U. S. 616, 633–635, 6 Sup. Ct. 524, 532–534. A bankrupt must deliver his account-books to a receiver, although they contain incriminating information. *Matter of Harris*, 221 U. S. 274, 31 Sup. Ct. 557. *Contra*, *In re Kanter*, 117 Fed. 356. And they may afterwards be used as evidence against him. *Kerrch* v. *United States*, 171 Fed. 366. But *cf.* *Blum* v. *State*, 94 Md. 375, 51 Atl. 26. Where, as in the principal case, the books have been delivered to a trustee, there is an additional reason for reaching the same result. The trustee is vested by operation of law with title to the bankrupt's property. BANKRUPTCY ACT OF 1898, § 70 *a* (1). See *In re Hess*, 134 Fed. 109, 111. Therefore, its use before the grand jury cannot be a violation of his constitutional rights. Thus, through the trustee as intermediary, a person may have to divulge information which cannot be got directly. But "that is one of the misfortunes of bankruptcy if it follows crime." See *Matter of Harris*, 221 U. S. 274, 279, 31 Sup. Ct. 557, 558.